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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 1454.1613

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Application Number	Filed
10/534,380	January 17, 2006

First Named Inventor: Norbert Kroth

Art Unit	Examiner
2617	Michael T. Vu

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record. Registration number 37,889.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/Thomas E. McKiernan/
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March 20, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Reasons for Requesting Review:

Claims 17-20, 26-29, and 33-36 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,075,779 to Agarwal et al. (hereinafter "Agarwal"). The second clause of claim 17, for example, recites:

> Determining a random delay time for user equipment to transmit a signal on an uplink access channel based upon a probability distribution that increases in density with increasing delay, the random delay time being determined by the user equipment.

Agarwal neither teaches, discloses, nor suggests "determining a random delay time for user equipment to transmit a signal on an uplink access channel based upon a probability distribution that increases in density with increasing delay, the random delay time being determined by the user equipment," as recited in claim 17. Agarwal, in fact, mentions no "probability distribution that increases in density with increasing delay," as recited in claim 17, at all.

In addition, nowhere in the section of the final Office Action mailed December 22, 2008 entitled "Response to Arguments" does the Examiner assert that Agarwal *does* show a "probability distribution that increases in density with increasing delay," as recited in claim 17.

In Agarwal, moreover, multiple random time delays are determined by a mobile-telephone, as shown in Fig. 3, not "by the user equipment" as recited in claim 17.

Agarwal, rather, determines a first random time delay based on a time delay parameter, i.e. Delay Time of Acknowledgment to Broadcast Teleservice Message (DTABTM), as described at column 4, lines 7 and 8. The DTABTM is received in a broadcast short message from the base station and multiplied with a random number between zero and one generated by the mobile-telephone, as described at column 5, lines 41-48. A third random delay is defined as a time interval between 0 and 30 blocks, with a granularity of six blocks.

Agarwal does not, however, describe how the mobile-telephone determines exactly which time interval it should use as the third random time delay. The first and third time delays described in Agarwal, thus, seemed to be determined using different principles. The aim of the time delays in Agarwal, however, is always to reduce collisions among acknowledging mobile telephones by distributing acknowledgment transmissions over time, as described at column 2, lines 19-22. Thus, Agarwal seeks to ideally arrive at an *even* distribution of these

acknowledgment transmissions over time, instead of "determining a random delay time for user equipment to transmit a signal on an uplink access channel based upon a probability distribution that increases in density with increasing delay," as recited in claim 17.

Agarwal, moreover, determines the duration of the random delay period with a *random* number generator, instead of "a probability distribution that increases in density with increasing delay," as recited in claim 17. In particular, as described at column 2, lines 28-31:

> The time delay parameter is used by the mobile-telephone in conjunction with the output of a random number generator to determine the duration of a random delay period.

Since Agarwal determines the duration of the random delay period with a random number generator, Agarwal is not "determining a random delay time for user equipment to transmit a signal on an uplink access channel based upon a probability distribution that increases in density with increasing delay," as recited in claim 17.

Agarwal, moreover, simply determines a *random* delay period for the mobile-telephone to transmit a BSM acknowledgment, instead of using "a probability distribution that increases in density with increasing delay," as recited in claim 17. In particular, as described at column 5, lines 29-33:

> The DTABTM is a time delay parameter, e.g., twenty minutes, which is multiplied by a random number generated by the mobile-telephone to determine a random delay period for the mobile-telephone to transmit a BSM acknowledgment.

Since Agarwal determines a random delay period for the mobile-telephone to transmit a BSM acknowledgment, Agarwal is not "determining a random delay time for user equipment to transmit a signal on an uplink access channel based upon a probability distribution that increases in density with increasing delay," as recited in claim 17. The rejection of claim 17 ought to be withdrawn.

Claims 18, 19, 20, 26-29, and 33-36 ought to be allowable for substantially similar reasons.